Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of) GN Docket no. 09-47
Broadband Deployment & Adoption) GN Docket No. 09-51
on Tribal Lands) GN Docket No. 09-137

Comments ? NBP Public Notice # 5

Sacred Wind Communications, Inc. (?SWC?) is a Class C corporation incorporated in the State of New Mexico and operates as a Rural Local Exchange Carrier (?RLEC?) principally on Navajo lands in New Mexico. SWC is the only nontribally owned RLEC in the country wholly dedicated to serving a tribal community, developing a basic local and broadband infrastructure over a vast unserved tribal area of the West. SWC has a unique relationship with the Navajo Nation, with its Navajo customers, and won recognition recently in a national small business program for its service to, and relationship with its customers. SWC, therefore, has a unique perspective as it attempts to address several issues of importance in the discussion of broadband expansion to extremely rural, tribal areas.

SWC?s rural area
SWC?s service territory is over 3,200 square miles of the 27,000 square mile Navajo Reservation and near-reservation lands. Within SWC?s service territory are located approximately 6,100 Navajo households without access to any home-based telephone service whatsoever, representing a telephone penetration rate of about 30 percent. Broadband was virtually nonexistent in its territory at the time of SWC?s start-up and is only now being promoted as SWC?s fixed wireless network is being completed. Mobile telephony is generally available in and around towns along Interstate 40, which cuts through Navajo lands in northwest New Mexico, but is between inadequate and absent in much of Navajo lands distant from the interstate. In one 600 square mile area of SWC?s service territory now being prepared for a fixed wireless phone and broadband system, 104 homes have been located ? none of them served. A majority of Navajo households are at or below the national poverty level and the Navajo population at large is among the highest at risk in the nation for school dropout, teen pregnancy, infant mortality, teen suicide, and diabetes.

Broadband data in SWC territory
At the time of SWC?s acquisition of Qwest Corporation?s system on Navajo lands, in late 2006, only 42 residential and business customers, less than 2 percent of SWC acquired customer base, living along the municipal boundaries of Gallup and Farmington, NM, had access to DSL services at

download rates starting at 256 Kbps. Of those 2,200 acquired customers, nearly 60 percent today have access to broadband and over 90 percent will have access by the end of first Quarter 2010. SWC is now completing the major portion of its fixed wireless network that is linked to its copper and fiber optic infrastructure and has begun to provide broadband and voice over fixed wireless systems to its new customers ? those formerly without any access to telecommunications services. One hundred percent (100%) of those newly served customers have access to broadband at speeds up to 3 Mbps, and more than 90 percent of all of SWC?s new customers will have such access.

SWC?s service territory encompasses portions of 29 Navajo Chapters, though having customers in 22 of those Chapters, including the Chapter Houses and community centers in those Chapters. SWC is now completing its fixed wireless network and expects to have broadband available to 50% of those Chapters by end of year 2009 and the other half by mid 2010. The Huerfano Chapter today receives over 3 Mbps to the Chapter House and community center and the Red Rock Chapter House, senior center and Head Start were provided in November of this year broadband at up to 5 Mbps.

SWC managed a field trial of fixed wireless equipment in 2008-2009 and was able to monitor and measure the acceptability and use of broadband on the part of 70 new tribal customers. Since then, as SWC?s network is expanding, SWC is able to monitor its broadband?s acceptability among larger numbers of customers. Some conclusions from its field trial and current experiences may have application in many other tribal or low income areas of the country.

1. The affordability of a computer is the main criterion in our low income tribal customer?s subscription to broadband.
2. PC literacy and Internet training is crucial to high acceptance of broadband service in the home.
3. Low income customers will generally start their Internet subscriptions at the most affordable levels or will change their subscriptions within the first 6 months to a lower priced option.
4. After our field trial, in which 100 percent of our trial customers were below the poverty level and during which all customers received Internet training, a free refurbished laptop, and free Internet service for 8 months at 512 Kbps and 1.5 Mbps, 60 percent retained Internet service, but 80 percent of those subscribed to our $15.00/month service of 128 Kbps. Less than 6 percent subscribed to service of 768 Kbps or above. (SWC?s rates are set based on NECA wholesale prices.) It is SWC?s belief that 30 to 40 percent of its non-poverty level customers will subscribe to broadband services over the next 3-5 years while 50 to 60 percent of its poverty level customers will continue to subscribe to Internet services at speeds lower than the FCC?s definition of broadband, less than 10 percent may subscribe to higher speeds, while 30 to 40 percent may not subscribe to any Internet services at all.

Tools and resources to promote broadband
Rather than focusing on the remote rural nature of the area served and on the best available

systems, and the costs of those systems, to serve such remote areas, allow us to speak to the fiduciary trust relationship of the federal government and the Tribes. In SWC?s experience, there are three major impediments to providing basic and broadband services to the Navajo people: 1) the Bureau of Indian Affairs (BIA); 2) the Navajo Nation Land Department?s deference to BIA processes and requirements; and 3) inadequate investment in telecommunications systems by out-of-state telecommunications companies (which is exacerbated by the costs of compliance with numbers 1 and 2.)

There are some initiatives that the FCC and Rural Utility Services (RUS) office of the USDA can adopt to augment the ability of tribally oriented companies to serve their tribal customers, but the major impediment to telecommunications development on Navajo lands, unless adequately addressed, will remain the BIA. An easy example of the problem can be seen from the introduction of the FCC?s Tribal Lifeline and Tribal Connect two decades ago. A $1.00 monthly telephone rate did not materially increase telephone penetration in the service territory that SWC acquired, simply because of the stubborn opposition from the BIA office in Crownpoint, NM to any new telecommunications infrastructure without the telecommunications carriers subjection to cumbersome and punitive land use authorization procedures and policies. (SWC, however, did increase the Tribal Lifeline subscription among its customer base from 26 customers at the time of its acquisition from Qwest in 2006 to nearly 1,000 Tribal Lifeline customers in 2008, simply by communicating with its customers and zealously promoting the program.) That office of the BIA does not distinguish a single telecommunications monopole that is wholly dedicated to serve Navajo customers from a 200 foot telecommunications tower that serves the traffic along an interstate highway. The process to approve either could easily take two years. That office interprets sections of its CFR meant for pipeline and transmission companies that traverse tribal lands to apply to simple telecommunications infrastructure, including the shortest of copper drop wires, that are designed to solely serve a tribal customer. One of many cases in point, is that office?s demand that a telecommunications company conduct a survey and then compensate a Navajo resident on BIA allotment land for the use of his land to deliver service to that same resident, whereas the CFR certainly was meant to have the allotment resident compensated for the use of his land by a landline that would cross his land to serve another.

One essential tool: RUS loans and grants, or others from other federal departments. The RUS has provided low interest loans and broadband grants to SWC and a number of tribal telecommunications companies. Without those, tribally oriented companies could not succeed, for the low income nature of many Tribes? membership, which translates often to low return on investment, would repel other loan institutions or private investors.

SWC has found that the placement and proper management of computer and Internet training sites on tribal lands enhances the appeal of, and increases sustained subscription to, Internet services.

SWC recorded over 4,000 visitors to its Internet training center at the Huerfano Chapter of the Navajo Nation in northwest New Mexico, established under the auspices of a RUS grant. It also witnessed how the Internet was used by its tribal customers, many of whom had never used a computer before. Emailing family members who lived off the reservation or on duty in Iraq is the most popular use of the Internet, followed by Internet academic research on the part of students, and then research on health issues and preventive medicine for livestock. The Internet was also used for job searches and online sales of handcrafts fabricated by Navajo artisans.

With the distribution of over an estimated 70,000 Navajo people living on tribal and near tribal lands in New Mexico, and over 120,000 Navajo people living in Arizona and Utah, such Internet training sites need to be replicated in strategically located Chapters along with mobile units travelling to multiple unserved Chapters.

A second essential tool: State PUC and FCC inducements to orient or ?localize? broadband services to tribes. It can be readily seen that out of state companies with more lucrative markets served elsewhere, either do not invest adequately in telecommunications infrastructure on tribal lands for purely economic reasons, or do not invest due to their impatience with, and in consideration of, the cost rights of way acquisition from the BIA and tribe. Orienting the service to the tribe, through tribal or private acquisition of the telecommunications systems on tribal lands, has had a striking success rate in both Arizona and New Mexico. Universal basic telephone service availability and high broadband availability provided by those tribally oriented companies is the result of the FCC?s and the RUS?s collaboration in helping those companies acquire assets from their out of state predecessor and build new infrastructure.

The federal government should provide a range of incentives to both tribally oriented companies and the larger incumbents to ?localize? tribal telecommunications operations. Such incentives might include tax incentives for the incumbent, regulatory incentives at the state and federal level for the incumbent and the acquiring prospect, and financing incentives and grants from the RUS, NTIA, or SBA. Collaboration with state regulatory commissions, the BIA, and the Tribes would be necessary.

A third essential tool: The creation of a more reasonable and timely governmental process to approve the development of telecommunications infrastructure on tribal lands. This would require full collaboration among federal and state departments to eliminate all impediments to building and improving telecommunications infrastructure on tribal lands, to especially include the FCC, RUS, BIA, and state highway departments and land commissions. Related to this tool is the acceptance by the federal and state governments of a tribe?s ability and right to manage its own rights of way processes.

Item: current federal regulation requires that environmental and archaeological surveys be conducted

for any construction done using federal dollars. This holds true in our area even on lands within utility easements and on tribal lands that have been previously withdrawn for use by utilities or for other structures where archaeological and environmental studies had already been conducted in previous years. Under the belief that no new human activity of any significant archaeological value on tribal lands would be found on a site that had been archaeologically surveyed within the last 50 years, SWC suggests that some flexibility to federal survey requirements be granted.

Item: the Navajo Nation possesses a robust and skilled Land Department responsible for review of petitions for land use on its lands, including an Office of Historical Preservation. Though the Navajo Nation might consent to a utility?s use of previously surveyed land to serve its people, the federal government ? RUS and the BIA ? requires new archaeological and environmental surveys. The BIA adds additional requirements on companies that attempt to serve tribal customers residing on BIA allotment lands, included in the description of tribal, off-reservation lands.

SWC recommends that federal rules and any applicable law that require archaeological and environmental studies be changed to exempt:
a. Tribal lands where the Tribe possesses a rights of way department and gives clearance to the applicant to build infrastructure;
b. Utility easements where archaeological and environmental studies have been conducted in the past fifty (50) years;
c. All other lands where a utility structure is to be removed and replaced with a new utility structure.

A fourth essential tool: the continuation of Universal Service Fund (USF) support for the RLECs serving some of the highest costing areas in the country, which may include elimination of the ?parent trap? clause in FCC rules that have a newly acquiring RLEC bound to the USF support level of the incumbent LEC. The FCC, of course, has granted waivers to tribally oriented companies acquiring systems in their tribal areas, including to SWC, but the waiver process can be seen as an impediment and certainly comes at a cost.

SWC encourages the FCC to further study the benefits of adding USF to broadband service delivery in high cost areas of the country, especially tribal areas. Related to this request is a second one that would have the FCC deny Eligible Carrier Status and USF support to mobile wireless carriers that would intend to compete in a tribally oriented company?s RLEC service territory. Where the RLEC incurs significant debt to build its systems in a high cost, low return service territory, governmentally supported inducements to national carriers to compete against the RLECs is not only financially damaging to the RLEC, but seems to place two separate federal initiatives in conflict.

SWC recommends that ETC status be granted to mobile wireless carriers to serve in RLECs? service territories only where such RLECs have demonstrated that they are incapable of, or unwilling to

deliver the services that the FCC would require of them.

A fifth essential tool: collaboration between the FCC?s USF management company, USAC, and NECA to enable RLECs that participate in the NECA pool to offer broadband rates that are more affordable for low income tribal members. Currently, NECA sets a wholesale rate for broadband services based on the number of a participating RLEC?s subscribers to broadband. Either through support from the USF for broadband services, or a special rate set by NECA for broadband to low income customers, that is more cost-based, the RLEC should be given the flexibility of adjusting its rates for specific classes of customers without incurring a loss for serving any given class.

Responding to the utility of promoting pilot programs to support broadband services
The FCC?s past actions in approving waivers for tribally oriented RLECs constitute, in SWC?s view, as sound a role for the FCC in establishing pilot projects for the delivery of broadband services in remote areas as anyone could devise. One only has to consider the success of SWC, the Mescalero Apache Telecommunications Company, the Ft. Mohave Telecommunications Company, the Gila River Telecommunications Company, among others, in building new infrastructure and providing broadband services on a broad scale to accept the idea that these companies serve as pilots for what should be done on tribal lands across America. They all begin with the acquisition of systems from their out of state incumbents and the necessary collaboration with their state PUC, FCC, and RUS to support the development of new infrastructure and the higher cost of operating in such areas. What is lacking, and what has already been discussed herein, are strong initiatives to make computers and higher speed Internet services more affordable for low income tribal households.

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